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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL LEE RUDOLPH, GREGORY SCOTT BLACKMAN,
UDO DIETRICH BODE, VIOLETA LUNGU, and JOHN R. SHOCK

Appeal 2010-000545
Application 10/795,769
Technology Center 1700

Decided: May 17, 2010

Before EDWARD C. KIMLIN, ADRIENE LEPIANE HANLON, and
CHUNG K. PAK, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-74.¹ We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellants' statement at page 2 of the Brief referring to claims 16-74 is considered harmless error. It is clear from the entirety of the Brief and the Examiner's Answer that the claims before us on Appeal are claims 1-74.

Claim 1 is illustrative:

1. A photosensitive element for use as a flexographic printing plate comprising
 - a) a support,
 - b) at least one elastomeric photopolymerizable layer on the support containing at least one elastomeric binder, at least one ethylenically unsaturated compound photopolymerizable by actinic radiation, and at least one photoinitiator or photoinitiator system, the elastomeric photopolymerizable layer having a surface opposite the support that defines a plane; and
 - c) a matted layer disposed above the surface of the photopolymerizable layer comprising a polymeric binder and at least one matting agent, the at least one matting agent capable of forming depressions from the plane into the photopolymerizable layer, and selected from the group consisting of
 - i) matting agents having a pore volume of ≥ 0.9 ml/g;
 - ii) matting agents having a BET surface of ≥ 150 m²/g;
 - iii) matting agents having an oil number of ≥ 150 g/100g;
 - iv) matting agents having at least one crosslinkable group; and
 - v) combinations thereof, wherein the matting agent is present in an amount $\geq 10\%$ by weight of the matted layer.

The Examiner relies upon the following references as evidence of obviousness (Ans. 3):

Frass	5,576,137	Nov. 19, 1996
Daems	6,551,759 B2	Apr. 22, 2003
De Voeght	6,994,026 B2	Feb. 07, 2006
Ueda	EP 465034	Jun. 18, 1990

Horsten

WO 94/11198

May 26, 1994

Appellants' claimed invention is directed to a photosensitive element for use as a flexographic printing plate. The element comprises a matted layer disposed on the surface of the photopolymerizable layer. The matted layer comprises matting agents having one of the five recited properties, including matting agents having at least one crosslinkable group. According to Appellants' Specification, the claim language "matting agents having at least one crosslinkable group" is intended to encompass photopolymerizable and photocrosslinkable groups, preferably ethylenically unsaturated groups, acryloyl groups and methacryloyl groups (Spec. 7).

The appealed claims stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 1-74 over Daems in view of Frass or Horsten,
- (b) claims 1-74 over Ueda in view of Frass or Horsten, and
- (c) claims 1-74 over De Voeght in view of Frass or Horsten.

Appellants do not separately argue any particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

There is no dispute that each of the primary references, Daems, Ueda and Voeght, discloses, like Appellants, a photosensitive element that may be

used as a flexographic printing plate. There is also no dispute that Ueda evidences what Appellants' Specification acknowledges was known in the art at the time of filing the present application, namely, the use of a matted layer on the surface of a photopolymerizable layer. The principal argument advanced by Appellants is that Daems, Frass, Horsten and Ueda neither show nor suggest that particles in the matted layer are selected from those having the group of properties recited in the appealed claims, or in the claimed amount of $\geq 10\%$ by weight of the matted layer that allows the matting agent to form depressions in the photopolymerizable layer.

However, Appellants have not refuted the Examiner's factual determination that both Frass and Horsten disclose matting agents for flexographic printing plates comprising polymeric particles having at least one crosslinkable group as defined in Appellants' Specification, i.e., Frass teaches polymeric (meth) acrylates and Frass teaches polymeric particles comprising crosslinkable acryloyl groups. The Examiner also has correctly found that both Frass and Horsten teach that such polymeric particles can be used in amounts greater than 10% by weight. Hence, Appellants have not rebutted the Examiner's legal conclusion that it would have been obvious for one of ordinary skill in the art to employ the polymeric matting agents of Frass and Horsten comprising crosslinkable groups in amounts greater than 10% by weight in covering the photopolymerizable layers of the three primary references.

We also agree with the Examiner that Appellants have not established that their silica matting agents having the claimed pore volume, BET surface area and oil number are substantially different than the silica matting agents that one of ordinary skill in the art would ordinarily employ in preparing a

matted layer for a flexographic printing plate. Appellants have not made any argument that matting agents within the scope of the appealed claims are patentably different in any respect from those which one of ordinary skill in the art would have selected from those commercially available.

Appellants refer to Specification Examples for demonstrating that matting agent concentrations of less than 10% by weight are not capable of forming depressions into the photopolymerizable layer. However, Appellants have not provided the requisite analysis of the Specification data which establishes that they have achieved any unexpected result by preparing photosensitive elements within the scope of appealed claim 1. It is not within the province of this Board to independently assess the probative value of Specification data and interpret it in a light most favorable to the Applicant. Moreover, Appellants have not addressed the Examiner's finding that Frass and Horsten teach the use of matting agents comprising crosslinkable groups in amounts well in excess of the claimed 10% by weight.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED

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